

**ASSEMBLY, No. 2784**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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INTRODUCED FEBRUARY 13, 2020

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**Co-Sponsored by:**

**Assemblywoman Vainieri Huttle**

**SYNOPSIS**

Authorizes DEP rulemaking to prevent backsliding of certain State environmental regulations due to changes in federal law or regulation.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 1/4/2021)**

1 AN ACT concerning certain environmental regulations and  
2 amending various parts of the statutory law.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 5 of P.L.1973, c.309 (C.23:2A-5) is amended to read  
8 as follows:

9 5. a. The commissioner shall have the power to formulate and  
10 promulgate, adopt, amend    and repeal rules and regulations,  
11 limiting, controlling    and prohibiting the taking, possession,  
12 transportation, importation, exportation, sale or offer for sale, or  
13 shipment of any nongame species or any wildlife on the State list of  
14 endangered species, and for the purposes of implementing section 6  
15 of P.L.2016, c.6 (C.23:2A-6.1). Such rules and regulations shall be  
16 designed to promote the public health, safety    and welfare and shall  
17 be adopted in accordance with the “Administrative Procedure Act,”  
18 P.L.1968, c.410 (C.52:14B-1 et seq.).

19 b. The commissioner is authorized to conduct periodic  
20 inspections in order to determine compliance with the rules and  
21 regulations adopted pursuant to this section, and, to that end, is  
22 authorized to charge and collect fees in an amount sufficient to  
23 cover the costs of the inspections and services performed pursuant  
24 to P.L.1973, c.309 (C.23:2A-1 et seq.). Such fees shall be devoted  
25 entirely and exclusively to carrying out the purposes and provisions  
26 of P.L.1973, c.309 (C.23:2A-1 et seq.). Inspection fees shall be  
27 established in accordance with a fee schedule adopted by the  
28 department as a rule and regulation pursuant to the provisions of the  
29 “Administrative Procedure Act.”

30 c. In the event of the federal delisting or a downgrade in the  
31 legally protected status of an endangered species which is listed, as  
32 of January 1, 2017, as endangered or threatened pursuant to the  
33 “Endangered Species Act of 1973,” Pub.L.93-205 (16 U.S.C. s.  
34 1533), the commissioner shall, notwithstanding the provisions of  
35 the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1  
36 et seq.), immediately upon filing proper notice with the Office of  
37 Administrative Law, adopt rules and regulations as the  
38 commissioner deems necessary to ensure the protection of that  
39 endangered species pursuant to this act. Such rules and regulations  
40 shall remain in effect for a period not to exceed 12 months, and  
41 shall, thereafter, be amended, adopted, or readopted by the  
42 commissioner in accordance with the requirements of the  
43 “Administrative Procedure Act.”  
44 (cf: P.L.2016, c.6, s.4)

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1       2. Section 8 of P.L.1954, c.212 (C.26:2C-8) is amended to read  
2 as follows:

3       8. a. The department shall have power to formulate and  
4 promulgate, amend , and repeal codes and rules and regulations  
5 preventing, controlling , and prohibiting air pollution throughout the  
6 State or in such territories of the State as shall be affected thereby,  
7 except as provided in subsection b. of this section; provided,  
8 however, that no such code, rule , or regulation and no such  
9 amendment or repeal shall be adopted except after public hearing to  
10 be held after 30 days' prior notice thereof by public advertisement  
11 of the date, time , and place of such hearing, at which opportunity to  
12 be heard by the department with respect thereto shall be given to the  
13 public; and provided, further, that no such code, rule , or regulation  
14 and no such amendment or repeal shall be or become effective until  
15 60 days after the adoption thereof as aforesaid. Any person heard  
16 at such public hearing shall be given written notice of the  
17 determination of the department.

18       All codes, rules and regulations heretofore adopted by the Air  
19 Pollution Control Commission shall continue in full force and effect  
20 subject to the power of the department to amend and repeal such  
21 codes, rules , and regulations as provided by **[this act]** P.L.1954,  
22 c.212 (C.26:2C-1 et seq.) .

23       b. Unless otherwise required by federal law, rule , or  
24 regulation, no code, regulation, rule , or standard may be adopted  
25 by the department that diminishes the efficacy of a hospital or  
26 medical disinfectant in killing or inactivating agents of infectious  
27 diseases, including, but not limited to, restrictions on the volatile  
28 organic compound content or emissions caused by the use of such  
29 products. No federal requirement to reduce volatile organic  
30 compound content or emissions in general may be construed to  
31 permit the department to regulate the volatile organic compounds  
32 found in, or released in the use of, a hospital or medical  
33 disinfectant, unless the federal law, rule , or regulation establishing  
34 the federal requirement specifically requires the reduction of  
35 volatile organic compounds found in, or released in the use of,  
36 hospital or medical disinfectants.

37       c. In the event of amendments or supplements to the federal  
38 Clean Air Act or the federal regulations adopted pursuant thereto  
39 that are less stringent than those in effect on January 19, 2017, the  
40 department shall, notwithstanding the provisions of the  
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
42 seq.), immediately upon filing proper notice with the Office of  
43 Administrative Law, adopt such rules and regulations as the  
44 commissioner deems necessary to ensure that the rules and  
45 regulations adopted pursuant to this section in effect at the time of  
46 the federal changes are not weakened. Such rules and regulations  
47 shall remain in effect for a period not to exceed 12 months, and  
48 shall, thereafter, be amended, adopted, or readopted by the

1 commissioner in accordance with the requirements of the  
2 “Administrative Procedure Act.”

3 (cf: P.L.1999, c.100, s.2)

4  
5 3. Section 4 of P.L.1977, c.74 (C.58:10A-4) is amended to read  
6 as follows:

7 4. The commissioner shall have power to prepare, adopt,  
8 amend, repeal , and enforce, pursuant to the "Administrative  
9 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), reasonable  
10 codes, rules and regulations to prevent, control or abate water  
11 pollution and to carry out the intent of **[this act]** P.L.1977, c.74  
12 (C.58:10A-1 et seq.) , either throughout the State or in certain areas  
13 of the State affected by a particular water pollution problem. Such  
14 codes, rules and regulations may include, but shall not be limited to,  
15 provisions concerning:

16 a. The storage of any liquid or solid pollutant in a manner  
17 designed to keep it from entering the waters of the State;

18 b. The prior submission and approval of plans and  
19 specifications for the construction or modification of any treatment  
20 work or part thereof;

21 c. The classification of the surface and ground waters of the  
22 State and the determination of water quality standards for each such  
23 classification;

24 d. The limitation of effluents, including toxic effluents as  
25 indicated herein;

26 e. The determination of pretreatment standards;

27 f. The establishment of user charges and cost recovery  
28 requirements in conformance with the Federal Act;

29 g. The establishment of a civil penalty policy governing the  
30 uniform assessment of civil penalties in accordance with section 10  
31 of P.L.1977, c.74 (C.58:10A-10).

32 In the event of amendments or supplements to the Federal Act or  
33 the federal regulations adopted pursuant thereto that are less  
34 stringent than those in effect on January 19, 2017, the commissioner  
35 shall, notwithstanding the provisions of the “Administrative  
36 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), immediately  
37 upon filing proper notice with the Office of Administrative Law,  
38 adopt such rules and regulations as the commissioner deems  
39 necessary to ensure that the rules and regulations adopted pursuant  
40 to this section in effect at the time of the federal changes are not  
41 weakened. Such rules and regulations shall remain in effect for a  
42 period not to exceed 12 months, and shall, thereafter, be amended,  
43 adopted, or readopted by the commissioner in accordance with the  
44 requirements of the “Administrative Procedure Act.”

45 (cf: P.L.1990, c.28, s.2)

46  
47 4. Section 4 of P.L.1977, c.224 (C.58:12A-4) is amended to  
48 read as follows:

- 1       4. a. The commissioner shall prepare, promulgate, and enforce  
2 and may amend or repeal:
- 3       (1) State primary drinking water regulations that at any given  
4 time shall be no less stringent than national regulations in effect at  
5 that time;
- 6       (2) State secondary drinking water regulations; and
- 7       (3) other regulations to protect potable waters, regulate public  
8 and nonpublic water systems, and carry out the intent of the  
9 provisions of P.L.1977, c.224 (C.58:12A-1 et seq.) in any one or  
10 more areas of the State requiring a particular safe drinking water  
11 program.
- 12       b. Subject to section 5 of P.L.1977, c.224 (C.58:12A-5), State  
13 primary drinking water regulations shall apply to each public water  
14 system in the State, except that such regulations shall not apply to a  
15 public water system:
- 16       (1) Which consists only of distribution and storage facilities and  
17 which does not have any collection and treatment facilities;
- 18       (2) Which obtains all of its water from, but is not owned or  
19 operated by, a public water system to which such regulations apply;
- 20       (3) Which does not sell water to any person; and
- 21       (4) Which does not provide water for potable purposes to any  
22 carrier which conveys passengers in interstate commerce.
- 23       c. The commissioner shall adopt and implement adequate  
24 procedures, promulgate appropriate rules and regulations, and issue  
25 such orders as are necessary for the enforcement of State primary  
26 drinking water regulations and for the provision of potable water of  
27 adequate volume and pressure; such regulations and procedures to  
28 include but not be limited to:
- 29       (1) Monitoring and inspection procedures;
- 30       (2) Maintenance of an inventory of public water systems in the  
31 State;
- 32       (3) A systematic program for conducting sanitary surveys of  
33 public water systems throughout the State or in a part thereof,  
34 whenever the commissioner determines that such surveys are  
35 necessary or advisable;
- 36       (4) The establishment and maintenance of a program for the  
37 certification of laboratories conducting analytic measurements of  
38 drinking water contaminants specified in the State primary and  
39 secondary drinking water regulations; and the assurance of the  
40 availability to the department of laboratory facilities certified by the  
41 administrator and capable of performing analytic measurements of  
42 all contaminant specified in the State primary and secondary  
43 drinking water regulations;
- 44       (5) The establishment and maintenance of programs concerning  
45 plans and specifications for the design, construction and operation  
46 of water systems, which programs:
- 47       (a) require all such plans and specifications to be first approved  
48 by the department before any work thereunder shall be commenced;

1 (b) assure that all new public water systems have adequate  
2 technical, managerial and financial capacity to comply with the  
3 provisions of the "Safe Drinking Water Act," P.L.1977, c.224  
4 (C.58:12A-1 et seq.), and all regulations promulgated by the  
5 department pursuant to that act prior to approval of such systems to  
6 distribute water for potable purposes;

7 (c) assure that all water systems will comply with any rules and  
8 regulations of the department; and

9 (d) assure and certify compliance with the State primary  
10 drinking water regulations or such requirements of the State  
11 secondary drinking water regulations as the commissioner deems  
12 applicable, and will deliver water with sufficient quality, volume  
13 and pressure to the users of such systems.

14 d. The commissioner shall keep such records and make such  
15 reports with respect to the duties, powers, and responsibilities of the  
16 commissioner under subsections a. and c. of this section as may be  
17 required by regulations established by the administrator pursuant to  
18 the federal act.

19 e. The commissioner may require any public water system to  
20 install, use, and maintain such monitoring equipment and methods,  
21 to perform such sampling, to maintain and retain such records of  
22 information from monitoring and sampling activities, to submit  
23 such reports of monitoring and sampling results, and to provide  
24 such other information as ~~he~~ the commissioner may require to  
25 assist in the establishment of regulations under the provisions of  
26 P.L.1977, c.224 (C.58:12A-1 et seq.), or to determine compliance or  
27 noncompliance with the provisions of P.L.1977, c.224 (C.58:12A-1  
28 et seq.) or with regulations promulgated pursuant to the provisions  
29 of P.L.1977, c.224 (C.58:12A-1 et seq.).

30 f. The commissioner shall have the right to enter any premises  
31 upon presentation of appropriate credentials during regular business  
32 hours, in order to test, inspect or sample any feature of a public  
33 water system, and in order to inspect, copy or photograph any  
34 monitoring equipment or records required to be kept under  
35 provisions of P.L.1977, c.224 (C.58:12A-1 et seq.).

36 g. (Deleted by amendment, P.L.1999, c.176).

37 h. In the event of amendments or supplements to the federal act  
38 or the federal regulations adopted pursuant thereto that are less  
39 stringent than those in effect on January 19, 2017, the commissioner  
40 shall, notwithstanding the provisions of the "Administrative  
41 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), immediately  
42 upon filing proper notice with the Office of Administrative Law,  
43 adopt such rules and regulations as the commissioner deems  
44 necessary to ensure that the rules and regulations adopted pursuant  
45 to this section in effect at the time of the federal changes are not  
46 weakened. Such rules and regulations shall remain in effect for a  
47 period not to exceed 12 months, and shall, thereafter, be amended,

1 adopted, or readopted by the commissioner in accordance with the  
2 requirements of the “Administrative Procedure Act.”

3 (cf: P.L.1999, c.176, s.6)

4  
5 5. This act shall take effect immediately.

6  
7  
8 STATEMENT

9  
10 This bill would authorize the Department of Environmental  
11 Protection (DEP) to maintain, at a minimum, certain federal  
12 requirements in effect on January 19, 2017 concerning endangered  
13 species, air pollution, water pollution, and safe drinking water.  
14 Specifically, this bill would amend “The Endangered and Nongame  
15 Species Conservation Act,” “Air Pollution Control Act (1954),” the  
16 “Water Pollution Control Act,” and the “Safe Drinking Water Act”  
17 to authorize the DEP to take certain rulemaking actions to ensure  
18 that New Jersey’s rules and regulations aren’t weakened due to  
19 changes in the related federal statutes.

20 This bill is intended ensure that certain environmental  
21 regulations in the State are not weakened solely because of actions  
22 taken at the federal level. In a state as densely populated as New  
23 Jersey, it is important to protect the State’s air, land, and water  
24 resources. For decades, New Jersey and its residents have relied on  
25 federal laws, including the “Endangered Species Act of 1973,” the  
26 “Clean Air Act,” the “Federal Water Pollution Control Act  
27 Amendments of 1972,” and the “Safe Drinking Water Act,” and the  
28 respective federal implementing regulations, along with  
29 corresponding comparable State laws, to help protect New Jersey’s  
30 public health, environment, and natural resources. The federal  
31 Endangered Species Act of 1973 generally prohibits activities  
32 affecting threatened and endangered species listed pursuant to that  
33 act unless authorized by a permit from the United States Fish and  
34 Wildlife Service or the National Marine Fisheries Service, as  
35 appropriate. The federal Clean Air Act regulates the discharge of  
36 air pollutants into the atmosphere. The federal Clean Water Act  
37 regulates the discharge of pollutants into water. The federal Safe  
38 Drinking Water Act establishes drinking water standards for  
39 drinking water systems.

40 These federal laws establish standards that serve as the baseline  
41 level for environment, natural resources, and public health  
42 protection, while authorizing states to adopt more protective  
43 measures. However, beginning in 2017, the President and United  
44 States Congress have engaged in efforts to weaken these federal  
45 laws and the protections they provide. This bill is intended to  
46 ensure continued protections for the environment, natural resources,  
47 and public health in the State even if these federal laws are  
48 weakened, and would retain the protections afforded under the

1 federal laws and implementing regulations in effect on January 19,  
2 2017, regardless of actions taken at the federal level to weaken  
3 those protections.

4 Specifically, the DEP Commissioner would be authorized,  
5 notwithstanding the provisions of the “Administrative Procedure  
6 Act,” to immediately upon filing proper notice with the Office of  
7 Administrative Law, adopt such rules and regulations as the  
8 commissioner deems necessary to ensure the State’s rules and  
9 regulations under the abovementioned four statutes are not  
10 weakened by changes at the federal level. These rules and  
11 regulations would remain in effect for a period not to exceed 12  
12 months, and would thereafter be amended, adopted, or readopted by  
13 the commissioner in accordance with the requirements of the  
14 “Administrative Procedure Act.”